The Honorable Brian D. Lynch
Chapter 11
Hearing Location: Tacoma, Courtroom I
Hearing Date: January 27, 2011
Hearing Time: 1:00 p.m.
Responses Due: January 25, 2011

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

In Re: HAWKS PRAIRIE INVESTMENT LLC, Debtor.	No. 10-46635-BDL HOMESTREET BANK'S REPLY TO GRIFFIN RESPONSE ON CONFIRMATION OF PLAN

HomeStreet Bank ("HSB") replies to Griffin's Response to HomeStreet's Motion to Enforce the Court's Orders and the Plan Confirmation Schedule as follows:

I. BRIEF DELAY?

Scott Griffin, as new management of the debtor, states that the withdrawal of the Plan and Disclosure Statement set for confirmation on January 27, 2011 will result only in a "brief delay." [Griffin Reply p.2, line 10.]

The withdrawal indicates that it will take 14 days to file the new Plan and Disclosure Statement. The hearings on Disclosure Statement and Plan confirmation are set by court rule at 25 days plus mailing time. The "brief delay" is thus over two months. Such a delay is hardly "brief."

II. OBVIOUS AMENDMENTS?

Griffin states that he merely seeks time to make "obvious" amendments to the Plan. There is no description of what amendments are obvious to Griffin or his counsel. The changes

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to a Plan can often be made by clarifications in the Order Confirming Plan. Since the Plan proposes sale free and clear and distributions to creditors strictly in compliance with the absolute priority rule, any material change would fail and the unknown issues which, if Griffin finally discloses them, can be incorporated in an Order Confirming Plan. Griffin and his counsel are unable to articulate for the Court and creditors specific items on which there should be changes or amendments despite the fact that the Plan has been before them for over a month.

III. HOMESTREET'S "AGENDA"

The Plan in this case provides for a sale under a plan which will save over $600,000 in excise tax. It provides for a sale short of paying HomeStreet's 4th position lien at an agreed price of $35,000,000 and it then provides for distribution in accordance with strict priorities specified by the Code. Each of the terms has already been presented to the Court in a Settlement Agreement.

Under the Plan, if the avoidance action adversary is not successful, the 3rd Lien to Talbitzer and Glavin should be paid in full. If the avoidance action on the 3rd Lien is successful all unsecured creditors will be paid in full or virtually so. "HomeStreet's narrow agenda" provides the potential to get unsecured creditors paid. Griffin's rhetoric simply does not ring true.

IV. PRECEDENT.

Efforts to scuttle a Chapter 11 Plan in the 11th hour have been rejected before. In *In re Johns Manville Corporation* 66 B.R. 517 (Bankr. S.D.N.Y. 1986), the court prevented a shareholders group from attempting to organize, meet and reject the comprehensive agreement reached with the creditors, and approved by the Manville Board of Directors which was the foundation of the Plan of Reorganization. The shareholder group sought to elect a new board which would reject the agreement. Despite ample precedent supporting the corporate rights of shareholders, Judge Lifland, refused to allow the attempt by the shareholders group to kill the Agreement. This action preserved the Plan which was ultimately confirmed.

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V. CONCLUSION.

The Plan should be confirmed. Any amendments that Griffin may have that are not material should be incorporated into the Order Confirming Plan. Any material amendments that would require re-voting should not be permitted.

DATED this 24th day of January, 2011.

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s/ Dillon E. Jackson

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